D.B. CIVIL SPECIAL APPEAL (W) NO. 134/2001

DATE OF ORDER : 07/10/2004

**HON'BLE MR. RAJESH BALIA,J.**
**HON'BLE MR. GOVIND MATHUR,J.**

Mr. B.C. Mehta, for the appellant.
Mr. B.L. Tiwari, Addl. Govt. Advocate.

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This special appeal is directed against the judgment of learned Single Judge dated 28.11.1996. The writ petition was allowed and the order of termination dated 3.7.91 was set aside and the non-petitioners appellants were directed to reexamine in the light of the past record the case of the petition for his continuation and regularization in accordance with law. The reasons for which the services were terminated also ordered to be considered now.

The facts of the case are that the petitioner was daily rated workman with the appellant in the department of Irrigation at Pali. He was initially appointed on 20.6.90 in the Office of Non-petitioner No.3 and the appointment was only for a period of three months. The appointment has been renewed for a fixed term of three months from time to time. Lastly by order dated 16.4.1991 the petitioner was again appointed on temporary basis as Junior Engineer for a period of three months w.e.f. 18.4.91. Prior to the

expiry of three months the services of the petitioner were brought to an end w.e.f. 3.7.91 vide Annexure-4. Vide order dated 12.7.91 while issuing notice of stay application the court directed that the non-petitioner shall re-employ the petitioner till 30th Sept. 1991 if vacancy exists and they are being filled up by other persons and the said stay order was confirmed by the order dated 7.8.95.

When the matter came up for hearing on 28.11.96 the learned counsel for the respondents was not present in the court and the matter was heard in his absence. The learned Single Judge observed that while admitting this petition this Court stayed the operation of the termination directing the continuance in service of the respondent and on this premise he further observed that it will be gravely unjust and immensely inequitable to permit the termination now for six years old reasons which might be valid six years ago may not be so now. With these observations the writ petition was disposed of with the following directions:

"(a) The impugned order of termination is set aside.

(b) The respondent shall be at liberty to re-examine in light of his past record the case of the petitioner for his continuation and regularization in accordance with law. The reasons for which the service was terminated by the impugned order, if exist, can also

be considered now."

Coming to know of this order the respondents made an application for setting aside the ex parte order passed and for re-hearing the case and dismiss the writ petition. That application was rejected by the learned Single Judge vide order dated 11.7.2000.

This misc application No.85/2000 was rejected on the ground that the writ petition was decided on merits, therefore, no injustice was caused to the rights of the State. The right of the State to take action against the petitioner as stated in the order deciding the writ petition is intact.

Aggrieved with these two orders this special appeal has been filed making the same prayer as was made in the misc application No.85/2000 viz. recalling the order dated 28.11.96 and dismissing the writ petition.

In spite of service no one has appeared for the respondents. The learned counsel for the appellant states that since long even during the pendency of the writ petition the petitioner has not appeared and joined the duties.

Be that as it may from the perusal of the record it

is apparent that both the orders dated 28.11.96 and 11.7.2000 have been passed on erroneous premises and are contrary to the material placed on record.

The order dated 11.7.2000 has been founded on the premise that the termination order dated 3.7.91 had been stayed whereas we have noticed above that the order of termination was never stayed by this court but only direction was issued that the **non-petitioner shall re-employ** the petitioner till 30th Sept. 1991 if vacancy exists and they are being filled up by other persons. The said order was the only order which was confirmed by the learned Single Judge.

There being no order staying the operation of the order dated 3.7.91, the basic premise on which the learned Single Judge assumed that the petitioner was continuing for six years under the orders of this Court was wholly unfounded.

While rejecting the application No.85/2000 the principal ground that prevailed with the learned Single Judge was that the writ petition was decided on merits and the State had been left free to take action against the petitioner. This too was founded on wrong premise. The writ petition was not decided on merits but on the contrary the learned Single Judge assumed that whatever grounds may be

for termination existed while making the order dt. 3.7.91 it would be unjust to continue the order of the termination and the State was free to pass a fresh order of termination after taking into consideration the ground that existed for passing the order dt. 3.7.91 without going into the merits of the case and without considering the fact that the petitioner was given fixed term appointment which at best could have continued up to 17.7.91. Therefore, learned Single Judge has not even considered the cause for absence of the learned counsel on 28.11.96 and disposed of the application for setting aside the said ex parte.

In the circumstances, both the orders dated 28.11.96 and 11.7.2000 are not sustainable and are hereby set aside.

Coming to the merits of the case we find that the order of appointment dated 16.4.91 was only for a period of three months commencing from 18.4.91 which expired on 17.7.91. Even if the order dt. 3.7.91 was invalid the employment of the petitioner could not have been continued beyond 17.7.91 on which date it would have come to an end automatically unless contract of employment was to be renewed and there being no other order by which the petitioner was to be continued in the employment no ground is existing for grant of relief. Accordingly, the writ petition also fails and is thereby dismissed.

No orders as to costs.

**(GOVIND MATHUR),J.** **(RAJESH BALIA),J.**

**J/G**